

## **REMARKS**

### **I. Introduction**

With the cancellation without prejudice of claims 15-40, claims 1-5 are pending in the present application. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

### **II. Response to Election/Restriction Requirement**

The Final Office Action states that “[n]ewly submitted claims 15-40 are directed to an invention that is independent or distinct from the invention originally claimed.” Final Office Action at page 2. Applicant respectfully disagrees with the reasoning set forth in the Final Office Action. However, for the purposes of expediting the prosecution of the present application, Applicant has canceled claims 15-40 herein without prejudice for filing in a divisional application.

### **III. Rejection of Claims 1-5 Under 35 U.S.C. 102(b)**

Claims 1-5 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,433,721 (“Hooven et al.”). Applicants respectfully submit that Hooven et al. do not anticipate claims 1-5 for the following reasons.

Claim 1 relates to an electromechanical driver, flexible shaft, and surgical attachment assembly. Claim 1 states that the assembly includes a flexible shaft including a flexible sheath having a first end and a second end, and having disposed therein at least one flexible torque translating member and at least one electrical connection wire. Claim 1 also recites that the at least one flexible torque translating member is coupleable to a surgical attachment at said first end of said sheath, and to a driver element at said second end. Claim 1 also recites that the surgical attachment includes at least one selectively moveable element, said moveable element being coupled to said torque translating member such that said moveable element may be selectively moved in correspondence with the provision of a torque along said torque translating member. Claim 1 also recites that the surgical attachment includes at least one selectively activatable sensor mechanism. Claim 1 has been amended herein without prejudice to recite that the at least one selectively activatable sensor mechanism is one of a tissue proximity sensor and a pulse oximeter. Support for this amendment can be found, for instance, at page 14, lines 18-19 of the Specification which states that “[a] circumferential pulse oximeter 150 is mounted in the housing on the outside rim of the housing, radially adjacent to the staple ports.” Support for this amendment can also be found, for instance, at page 14, lines 28-30 of the Specification which states that “the attachment also includes a tissue proximity sensor 152, a portion of which is ...mounted to the external rim of the housing.” Claim 1 recites that the at least one selectively activatable

sensor mechanism is for sensing and providing data concerning at least one feature of the environment surrounding said attachment when selectively activated by an activating signal. Claim 1 further recites that the surgical attachment includes at least one transmitter and receiver mechanism coupled to the sensor mechanism and the at least one electrical connection wire for receiving said activating signal, and transmitting said sensor data along said connection wire. Claim 1 further recites that the driver element includes a torque generating mechanism coupled to said torque translating member, and a processor element coupled to said at least one electrical connection wire for sending an activating signal, receiving said sensor data, analyzing same, and controlling the application of said torque by said torque generating mechanism in accordance with said analysis.

Applicant respectfully maintains that claim 1 is not anticipated by Hooven et al. for at least the reason that Hooven et al. do not disclose or even suggest all of the limitations recited in claim 1. For example, Hooven et al. do not disclose or even suggest at least one selectively activateable sensor mechanism being one of a tissue proximity sensor and a pulse oximeter for sensing and providing data concerning at least one feature of the environment surrounding said attachment, as recited in claim 1. For example, page 14, lines 18-19 of the Specification states that “[a] circumferential pulse oximeter 150 is mounted in the housing on the outside rim of the housing, radially adjacent to the staple ports.” The Specification further states at page 14, lines 22-23, that “the profusion of fresh blood through a tissue may be determined by this device.” In addition, page 14, lines 28-30 of the Specification states that “the attachment also includes a tissue proximity sensor 152, a portion of which is ...mounted to the external rim of the housing.” The Specification further states at page 15, lines 1-6, that “if the tissue which is supposed to be disposed between the anvil and housing is present, then the proximity sensor's light detectors will not receive a signal (or at least below a set threshold), alternatively, if the tissue is missing, then the light detectors will receive a stronger signal, indicating that there is no tissue blocking the transmission of the light.”

Hooven et al. describe that “[t]he head 205 of the stapler contains electronic sensors which detect motion of the staple forming and tissue cutting components located within the head.” Col. 7, lines 49-51. Hooven et al. also state that “[i]nductive sensor 215 will sense the number of times the magnetic media 216, attached to the power nut, passes in close proximity to it.” Col. 8, lines 29-31. However, the electronic sensor contained in the head 205 of the stapler is neither a tissue proximity sensor nor a pulse oximeter. In addition, the electronic sensor contained in the head 205 of the stapler does not sense and provide data concerning at least one feature of the environment surrounding an attachment, but rather it detects motion of the staple forming and tissue cutting components located within the head. Furthermore, the inductive sensor 215 is also neither a tissue proximity sensor nor a pulse oximeter. Still further, the inductive sensor 215 also does not sense and provide data

concerning at least one feature of the environment surrounding an attachment, but rather senses a number of rotations of a driver element by sensing the number of times the magnetic media 216, attached to the power nut, passes in close proximity to it.

In addition, Hooven et al. do not disclose or even suggest a processor element receiving the sensor data concerning at least one feature of the environment surrounding the attachment, analyzing same, and controlling the application of a torque by a torque generating mechanism in accordance with the analysis, as recited in claim 1. For example, the Specification states at page 10, lines 1-4, that “[a] lock out feature is maintained by the processor unit until such time as the surgeon causes the processor ... in the handle to query the tissue proximity sensor and the pulse oximeter sensor in the attachment to determine if the tissues to be stapled together form a complete contiguous ring...”. As set forth above, the electronic sensor contained in the head 205 of the stapler detects motion of the staple forming and tissue cutting components located within the head. With respect to the electronic sensor contained in the head 205 of the stapler, Hooven et al. at most disclose a processor that controls an aspect of that device in accordance with the detection of the motion of the staple forming and tissue cutting components located within the head. Likewise, and as set forth above, the inductive sensor 215 senses a number of rotations of a driver element by sensing the number of times the magnetic media 216, attached to the power nut, passes in close proximity to it. With respect to the inductive sensor 215, Hooven et al. at most disclose a processor that controls an aspect of that device in accordance with a number of rotations of a driver element and/or the number of times the magnetic media 216, attached to the power nut, passes in close proximity to it. Therefore, there is no processor of Hooven et al. that controls any aspect of that device in accordance with any sensor data concerning at least one feature of the environment surrounding an attachment.

To anticipate a claim, each and every element as set forth in the claim must be found in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of Calif., 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). That is, the prior art must describe the elements arranged as required by the claims. In re Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). As more fully set forth above, it is respectfully submitted that Hooven et al. do not disclose, or even suggest, at least one selectively activatable sensor mechanism being one of a tissue proximity sensor and a pulse oximeter for sensing and providing data concerning at least one feature of the environment surrounding said attachment, nor do Hooven et al. disclose, or even suggest, a processor element receiving the sensor data concerning at least one feature of the environment surrounding the attachment, analyzing same, and controlling the application of a torque by a torque

generating mechanism in accordance with the analysis as recited in claim 1. It is therefore respectfully submitted that Hooven et al. do not anticipate claim 1.

As for claims 2-5, which depend from claim 1 and therefore include all of the limitations of claim 1, it is respectfully submitted that Hooven et al. do not anticipate these dependent claims for at least the same reasons given above in support of the patentability of claim 1, and Applicant respectfully requests that the rejection of these claims be withdrawn also.

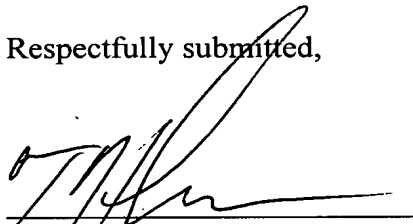
**IV. Conclusion**

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Dated: Oct. 14, 2005

Respectfully submitted,

By:

  
Thomas C. Hughes  
Reg. No. 42,674

**\*26646\***

**26646**

PATENT TRADEMARK OFFICE

KENYON & KENYON  
One Broadway  
New York, New York 10004  
(212) 425-7200